



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 131206999-4206-01]

RIN 0648-BD83

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Coastal Migratory Pelagic Resources in the Gulf of Mexico and
Atlantic Region; Amendment 20A

AGENCY: National Marine Fisheries Service (NMFS), National
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 20A to the Fishery Management Plan for the Coastal Migratory Pelagic Resources (CMP) in the Gulf of Mexico and Atlantic Region (FMP) (Amendment 20A), as prepared and submitted by the Gulf of Mexico (Gulf) and South Atlantic Fishery Management Councils (Councils). If implemented, this rule would restrict sales of king and Spanish mackerel caught under the bag limit (those fish harvested by vessels that do not have a valid commercial vessel permit for king or Spanish mackerel and are subject to the bag limits specified in 50 CFR 622.382) and remove the income qualification requirements for king and Spanish mackerel

commercial vessel permits. The purpose of this rule is to obtain more accurate landings data while ensuring the CMP fishery resources are utilized efficiently.

DATES: Written comments must be received on or before [insert date 45 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-2013-0168" by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0168, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive

information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the documents supporting this proposed rule, which include an environmental assessment, a Regulatory Flexibility Act analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_sa/cmp/index.html.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule may be submitted in writing to Anik Clemens, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; and OMB, by e-mail at OIRA_Submission@omb.eop.gov, or by fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727-824-5305, or e-mail: Susan.Gerhart@noaa.gov.

SUPPLEMENTARY INFORMATION: The coastal migratory pelagic (CMP) fishery in the Gulf of Mexico (Gulf) and the Atlantic is managed under the FMP. The FMP was prepared by the Councils and implemented through regulations at 50 CFR part 622 under the

authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Management Measures Contained in the Proposed Rule

Currently, no Federal permits are required to sell CMP species, although commercial vessel permits are required to exceed the bag limit for king and Spanish mackerel. All fish harvested in Federal waters that are sold are considered commercial harvest and count towards a species' commercial quota, whether or not the fisherman has a Federal commercial permit. The Councils and NMFS are concerned that landings from recreational trips that are sold may contribute to the commercial quota and lead to early closures in the commercial sector. Reducing the sale of fish caught under the bag limit should improve the accuracy of data by reducing "double counting," i.e., harvest from a single trip that is counted towards both the commercial quota and recreational allocation. This practice occurs when the same catches are reported through recreational surveys and commercial trip tickets and logbooks.

For the Gulf region, this rule proposes to prohibit the sale of bag-limit-caught king and Spanish mackerel, except in two limited circumstances. First, bag-limit-caught king and Spanish mackerel could be sold when harvested during a for-hire trip on a vessel with both a Gulf Charter Vessel/Headboat

Coastal Migratory Pelagic Fish Permit and either a King Mackerel Commercial Permit or a Spanish Mackerel Commercial Permit, as appropriate to the species harvested or possessed. The purpose of this exception is to preserve a historic practice that is important to Gulf charter and headboat businesses. Second, king and Spanish mackerel harvested during state-permitted tournaments may be donated to a dealer who has a state or Federal permit and then sold by that dealer, if the proceeds are donated to charity. Dealers receiving such fish must report them as tournament-caught fish. In the Gulf, sales from dually-permitted vessels or tournaments would only occur in Florida, because all other Gulf states prohibit the sale of any bag-limit-caught fish.

Currently, there is no Federal dealer permit for king or Spanish mackerel. However, a proposed rule published on January 2, 2014 (79 FR 81) for the Generic Dealer Amendment includes an action to implement a Gulf and South Atlantic dealer permit, which would be required for king and Spanish mackerel dealers. Therefore, if the Generic Dealer Amendment is approved and a final rule is implemented, there would be a Federal dealer permit for king and Spanish mackerel. In addition, the proposed rule for the Generic Dealer Amendment includes a restriction stating that a federally permitted dealer must first receive

fish only from a federally permitted vessel. This provision would be codified at § 622.386(c), and provides: "Coastal migratory pelagic fish harvested in or from the Gulf or South Atlantic EEZ may be first received by a dealer who has a valid Gulf and South Atlantic dealer permit, as required under § 622.370(c)(1), only from a vessel that has a valid Federal commercial vessel permit, as required under § 622.370(a), or a charter vessel/headboat permit for coastal migratory pelagic fish, as required under § 622.370(b)."

Amendment 20A and this proposed rule would allow a federally permitted dealer to receive tournament-caught fish and then sell those fish as long as the proceeds are donated to a charity. Therefore, if the final rule for the Generic Dealer Amendment is implemented, an exception to the restriction in § 622.386(c) would be added in the final rule for Amendment 20A, allowing dealers to sell tournament-caught fish and donate the proceeds to a charity. Specifically, paragraph § 622.386(e) would be amended to provide: "Federally permitted dealers who accept donated king or Spanish mackerel under this section are exempt from the restrictions in section (c) of this paragraph, and can accept these fish from non-federally permitted vessels."

For the Atlantic region, this rule proposes to prohibit the sale of all bag-limit-caught king and Spanish mackerel, except

those harvested during a state-permitted tournament. As in the Gulf, king and Spanish mackerel harvested during state-permitted tournaments may be donated to a dealer who has a state or Federal permit and then sold by that dealer, if the proceeds are donated to charity. Dealers receiving such fish must report them as tournament-caught fish.

In addition, the rule proposes to remove the income qualification requirements for king and Spanish mackerel commercial vessel permits. Currently, to obtain or renew a king or Spanish mackerel commercial vessel permit, a minimum amount of the applicant's earned income must be derived from commercial fishing. These requirements are difficult to enforce, and have recently been removed as requirements to obtain or renew a Gulf reef fish permit. No other Federal permit in the Southeast Region has an income qualification requirement except the spiny lobster permit, which mirrors requirements by Florida. This action would not affect the number of king mackerel permits issued, which are limited access, but could increase the number of Spanish mackerel permits issued, which are open access. Eliminating the income qualification requirements would afford more flexibility to fishermen by allowing them to earn a larger portion of income from non-fishing occupations.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with Amendment 20A, the FMP, the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) for this rule, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA describes the economic impact that this proposed rule, if implemented, would have on small entities. A description of the action, why it is being considered, and the objectives of and legal basis for this action are contained in the preamble. A copy of the full analysis is available from the NMFS (see ADDRESSES). A summary of the IRFA follows.

The purpose of this rule is twofold: (1) to reduce current sales of Spanish and king mackerel harvested in Federal waters by vessels without Federal commercial permits for those species and by vessels with these permits during for-hire fishing trips, and 2) to eliminate current income requirements for Federal commercial king and Spanish mackerel permits. Another action to reduce the number of Federal commercial king mackerel

permits, which are limited access, was considered but rejected in favor of the status quo.

Reducing sales of bag-limit-caught king and Spanish mackerel harvested in Federal waters of the Gulf and Atlantic Region is needed to reduce double-counting of landings. Double-counting occurs because landings of for-hire vessels are included in the recreational count and, when sold, also count against the commercial quota. Inclusion in the commercial count can contribute to earlier closures of the commercial sector and erroneous estimates of landings that impact stock assessments. Eliminating current income requirements is needed to end an unnecessary barrier to entry in the fishery. Presently, a non-owner operator of a permitted vessel or any applicant for a new Spanish mackerel or transferred king mackerel permit cannot qualify for either permit if the applicant's income from fishing is less than \$10,000, or less than 25 percent of the applicant's income from all sources for 1 out of the past 3 years. Removing the current income requirements may increase participation in this fishery, and would allow permit holders greater flexibility in obtaining non-fishery income.

The Magnuson-Stevens Act provides the statutory basis for the proposed action.

No duplicative, overlapping, or conflicting Federal rules

have been identified.

The rule would apply directly to businesses that operate in the finfish fishing (NAICS 114111) and scenic sightseeing water transportation industries (NAICS 487201), the latter of which includes for-hire fishing. The prohibition of bag-limit sales would directly affect all businesses: (1) in the finfish and for-hire fishing industries that sell king and Spanish mackerel harvested in Federal waters of the Gulf and Atlantic Region and landed by vessels without valid Federal commercial permits for the species; and (2) in the for-hire fishing industry that sell king and Spanish mackerel harvested in Federal waters of the Atlantic Region and landed by vessels with the valid Federal commercial permits. The elimination of the income requirements for Federal king and Spanish mackerel commercial permits would directly affect businesses in both industries that presently possess or aspire to possess at least one of the two permits.

On June 20, 2013, the SBA issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398). That rule increased the size standard for commercial finfish harvesters from \$4.0 million to \$19.0 million in annual receipts. The number of small businesses that operate in the finfish fishing industry and own or operate commercial fishing vessels that harvest king and

Spanish mackerel in Federal waters without the respective commercial permits is unknown. Sales of bag-limit quantities of king and Spanish mackerel harvested by these vessels would represent incidental landings. However, NMFS estimates that a small business in the finfish fishing industry without the Federal commercial permits and with an average size commercial vessel and 3-person crew could lose up to \$99 to \$149 per trip from the prohibition of bag-limit sales of king mackerel and up to \$124 per trip from the prohibition of bag-limit sales of Spanish mackerel. To avoid the losses of sales of Spanish mackerel, a small commercial fishing business could purchase a Federal commercial Spanish mackerel permit for \$25 each year. To avoid losses of sales of king mackerel, the same small business in the finfish fishing industry would have to acquire a Federal commercial king mackerel permit from an existing permit holder. A query of transferred king mackerel permits from January 1, 2008, through June 2013, was conducted and reported costs of acquiring a permit were found to range from \$0 to \$10,000 per transferred permit, with a median of \$3,625 and average of \$2,860. Given that cost, a small business in the finfish fishing industry that incidentally catches king mackerel in Federal waters likely would not choose to purchase a permit that is used to commercially target the species.

The small business size standard for the scenic sightseeing water transportation industry is \$7.0 million in annual receipts. For-hire fishing vessels that harvest king and Spanish mackerel in Federal waters of the Gulf and Atlantic Region are required to have Federal Gulf CMP and South Atlantic CMP charter/headboat permits, respectively. NMFS estimates that up to 79 percent (1,153) of the for-hire vessels that have a Federal South Atlantic charter/headboat CMP permit, and up to 91 percent (1,234) of the for-hire vessels that have a Federal Gulf CMP permit, lack valid Federal commercial king mackerel permits and may land and sell king mackerel in bag-limit quantities. From that, NMFS estimates that as many as to 2,387 small for-hire fishing businesses could be adversely affected by the prohibition on sales of king mackerel caught without a valid Federal commercial king mackerel permit. NMFS expects that significantly less than 2,387 small businesses could be adversely affected by the prohibition on sales of Spanish mackerel without a valid Federal commercial Spanish mackerel permit, because it is an open access permit. As many as 307 small for-hire fishing businesses with a Federal Atlantic charter/headboat CMP permit could lose sales of king and Spanish mackerel that were harvested during a for-hire trip.

NMFS estimates that a small for-hire fishing business

without valid Federal commercial king and Spanish mackerel permits could lose revenues from sales of king mackerel of as much as \$33 to \$49.5 per angler onboard, and of Spanish mackerel as much as \$41.25 per angler onboard, per for-hire trip., Presuming then an average of 3 anglers on aboard, NMFS estimates a for-hire fishing vessel could lose, on average, as much as \$99 to \$149 per trip from the prohibition of bag-limit sales of king mackerel and \$124 per trip from the prohibition of bag-limit sales of Spanish mackerel. Those figures would also apply to small for-hire fishing businesses with the valid Federal commercial permits that operate in Federal waters of the Atlantic Region. The figures, however, presume anglers catch and land marketable sizes and the maximum amount allowed, do not take any mackerel home with them and, instead, give all to the vessel's crew who, in turn, sell it. Small for-hire fishing businesses that operate and sell king and Spanish mackerel in the Gulf Council's jurisdiction could avoid those losses by acquiring the Federal commercial permits for the species, while those that operate and sell the species in the South Atlantic Council's jurisdiction could not, although some may be able to reduce losses by relocating to the Gulf Council's jurisdiction.

Eliminating the income requirements for the Federal commercial king and Spanish mackerel permits would apply to all

of the small businesses that presently possesses or seek to possess one of the 1,658 valid Federal commercial king mackerel permits, and any that presently possesses one of the 1,285 Spanish mackerel permits or seeks to acquire one. Eliminating the income requirements would generate a beneficial economic impact because it would eliminate the time and other costs currently incurred by small businesses to demonstrate that they meet the income requirements to obtain a permit. It would also benefit any small business, such as a new business, that cannot satisfy the income requirements because its income from fishing is either less than \$10,000 or less than 25 percent of its income from all sources during one of the three calendar years preceding the application.

The above prohibitions on sales of king and Spanish mackerel would have an indirect effect on small businesses that operate in the fish and seafood merchant wholesales industry (NAICS 424460), which has a small business size standard of 100 employees. It is unknown how many of these small businesses could be indirectly affected, because a Federal dealer license is not required to purchase king and Spanish mackerel harvested and landed by vessels operating in Federal waters. However, 573 fish and seafood wholesale establishments were located in the Gulf and South Atlantic States in 2011.

The alternative to allow sales of king and Spanish mackerel caught by anglers aboard for-hire fishing vessels with Federal commercial king and Spanish mackerel permits in the South Atlantic Council's jurisdiction was considered, but rejected, although it would have a smaller adverse economic impact on small businesses in the for-hire fishing industry than the preferred alternative. However, this rejected alternative would not reduce double-counting of landings, and therefore would not meet the Council's objective of improving landings data.

The status quo alternative that allows sales of king and Spanish mackerel harvested by commercial vessels without Federal commercial king and Spanish mackerel permits was considered, but rejected, because the South Atlantic Council chose to prohibit all sales of king and Spanish mackerel harvested by vessels without the above Federal commercial permits. The status quo alternative, however, would have a smaller adverse economic impact on small businesses in the finfish fishing industry than the preferred alternative.

The alternative to prohibit sales of king and Spanish mackerel by anglers aboard for-hire fishing vessels with Federal commercial king and Spanish mackerel permits in the Gulf Council's jurisdiction was considered, but rejected because it would have a larger adverse economic impact on small businesses

in the for-hire fishing industry than the preferred alternative.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection-of-information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains collection-of-information requirements subject to the PRA. NMFS is revising the collection-of-information requirements under OMB control number 0648-0205. NMFS estimates the removal of the income qualification requirements for commercial king and Spanish mackerel permit holders will result in a net decrease in the time to complete the Federal Permit Application (for all applicants). In addition, the current burden estimate of 40 minutes per applicant to complete the application form would decrease to 30 minutes per applicant, because the application instructions have been simplified and reorganized so that there are half as many pages of instructions to read when filling out the application. These estimates of the public reporting burden include the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the

collection-of-information.

These requirements have been submitted to OMB for approval. NMFS seeks public comment regarding: Whether this proposed collection-of-information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection-of-information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding the burden estimate or any other aspect of the collection-of-information requirements, including suggestions for reducing the burden, to NMFS and to OMB (see ADDRESSES).

List of Subjects in 50 CFR Part 622

Atlantic, Coastal Migratory Pelagic Resources, Fisheries,
Fishing, Gulf, King mackerel, Spanish mackerel.

Dated: March 13, 2014

Eileen Sobeck,

Assistant Administrator for Fisheries,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622
is proposed to be amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH
ATLANTIC

1. The authority citation for part 622 continues to read
as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.370, paragraphs (a)(1) and (a)(3) are revised to read as follows:

§ 622.370 Permits.

(a) * * *

(1) King mackerel. For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, or to sell king mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, a commercial vessel permit for king mackerel must have been issued to the vessel and must be on board. See § 622.371 regarding a limited access system applicable to commercial vessel permits for king mackerel and transfers of permits under the limited access system.

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(3) Spanish mackerel. For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, or to sell Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, a commercial vessel permit for Spanish mackerel must have been issued to the vessel and must be on board.

* * * * *

§ 622.371 [Amended]

3. In § 622.371, remove paragraphs (c), (d), and (e), and redesignate paragraph (f) as paragraph (c).

4. In § 622.386, paragraph (a) is revised and paragraphs (d) and (e) are added to read as follows:

§ 622.386 Restrictions on sale/purchase.

* * * * *

(a) King and Spanish mackerel. A king or Spanish mackerel harvested or possessed in the EEZ on board a vessel that does not have a valid commercial vessel permit for king mackerel, as required under § 622.370(a)(1), or a valid commercial vessel permit for Spanish mackerel, as required under § 622.370(a)(3), or a king or Spanish mackerel harvested in the EEZ or possessed under the bag limits specified in § 622.382, may not be sold or purchased, except when harvested under the bag limits on board a vessel operating in the Gulf as a charter vessel or headboat and that vessel has both a valid Federal charter vessel/headboat permit for Gulf coastal migratory pelagic fish, as required under § 622.370(b)(1), and a valid commercial vessel permit for king mackerel or Spanish mackerel, as required under § 622.370(a)(1), as appropriate to the species harvested or possessed.

* * * *

(d) Cut-off (damaged) king or Spanish mackerel. A person may not sell or purchase a cut-off (damaged) king or Spanish mackerel that does not comply with the minimum size limits

specified in § 622.380(b) or (c), respectively, or that is in excess of the trip limits specified in § 622.385(a) or (b), respectively.

(e) State-permitted tournaments. King or Spanish mackerel harvested in a state-permitted tournament in the South Atlantic, Mid-Atlantic, or the Gulf may not be sold for profit but may be donated to a state dealer or Federal dealer. Dealers accepting these tournament-caught king or Spanish mackerel must be permitted and must comply with all transfer and reporting requirements. Specifically, dealers must donate the monetary value (sale price or cash equivalent of value received for the landings) from the sale of tournament-caught fish to a charitable organization, as determined by the state. The monetary value received from the sale of tournament-caught fish may not be used to pay for tournament expenses. In addition, the fish must be handled and iced according to the Hazard Analysis Critical Control Point (HACCP) standards, and dealers must report tournament caught king and Spanish mackerel as "tournament catch" and comply with all Federal and state reporting requirements.

Date: 03/19/2014]